

**CONTRACT AMENDMENT NO. 2**  
**ONLINE EDUCATIONAL SERVICES**  
**MILES COMMUNITY COLLEGE**  
**CONTRACT NO. COR-SVCS-2021-0392-PHCF**

This CONTRACT AMENDMENT No. 2 amends the above-referenced contract between the **State of Montana, Department of Corrections** (State), whose address and phone number are P.O. Box 201301, 5 South Last Chance Gulch, Helena, MT 59620-1301, 406-444-3930 and **Miles Community College**, (Contractor), whose address and phone number are 2715 Dickson St., Miles City, MT 59301, (406) 874-6100. This Contract is amended for the following purpose(s):

- 1) In accordance with Section 1, of the above-referenced contract, entitled Effective Date, Duration, and Renewal, parties mutually agree to extend this Contract for the period November 2, 2022, through November 1, 2023, per the terms, conditions, and prices agreed upon. This is the 2<sup>nd</sup> renewal, 3<sup>rd</sup> year of the Contract. This Contract, including any renewals, may not exceed a total of seven (7) years.
- 2) In accordance with Section 12, of the above-referenced contract, entitled Compliance with Laws, parties mutually agree to replace the previously agreed-upon language with the language as shown below. **(The referenced Sections will read as follows with new language underlined).**

**12. COMPLIANCE WITH LAWS**

**12. Applicable Laws.** Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act 42 U.S.C. § 18001 et seq. Contractor will comply with the Prison Rape Elimination Act 34 U.S.C. § 30301 et seq., the Prison Rape Elimination Act final rule 28 CFR Part 115, and MDOC Policy 1.1.17, Prison Rape Elimination Act to include incident reporting. State has a zero-tolerance policy as to incidents of sexual assault/rape or sexual misconduct in its correctional facilities or premises. Contractor is referred to § 45-5-501 MCA. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with § 49-3-207, MCA, and State of Montana Executive Order No. 04-2016, Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

No changes made to section 12.1.

- 3) In accordance with Section 22, of the above-referenced contract, entitled Liaisons and Service of Notices, subsection 22.2, entitled Contract Manager, parties mutually agree to replace the State's Contract Manager as shown below:


**CURRENT:** Kristi Hernandez is State's  
Contract Manager  
5 South Last Chance Gulch  
Helena, MT 59601  
(406) 444-9649  
[Kristi.Hernandez@mt.gov](mailto:Kristi.Hernandez@mt.gov)

**NEW:** Ashley Salmon is State's  
Contract Manager  
5 South Last Change Gulch  
Helena, MT 59601  
(406) 444-4931  
[Ashley.Salmon@mt.gov](mailto:Ashley.Salmon@mt.gov)

Except as modified above, all other terms and conditions of Contract No. **COR-SVCS-2021-0392-PHCF**  
**including Amendment #1**, remain unchanged.

**STATE OF MONTANA  
Montana Department of Corrections  
5 S. Last Chance Gulch  
Helena, MT 59601**

**Miles Community College  
2715 Dickinson St.  
Miles City, MT 59301**

DocuSigned by:  
  
Steve Ray, Superintendent  
Pine Hills Correction Facility  
10/28/2022  
(Date)

DocuSigned by:  
  
Erin Niedege  
Dean of Enrollment Management and  
Educational Support Services  
10/28/2022  
(Date)

Approved as to Form:

DocuSigned by:  
  
Ashley Salmon, Contracts Officer  
Financial Services Bureau  
10/27/2022  
(Date)

Approved as to Legal Content:

DocuSigned by:  
  
Molenda McCarty, Legal Counsel  
Legal Services Bureau  
10/27/2022  
(Date)

**CONTRACT AMENDMENT NO. 1  
ONLINE EDUCATIONAL SERVICES  
CONTRACT NO. COR-SVCS-2021-0392-PHCF**

This CONTRACT AMENDMENT No. 1 amends the above-referenced contract between the **State of Montana, Department of Corrections** (State), whose address and phone number are P.O. Box 201301, 5 South Last Chance Gulch, Helena, MT 59620-1301, 406-444-3930 and **Miles Community College**, (Contractor), whose address and phone number are 2715 Dickinson St., Miles City, MT 59301, (406) 874-6100. This Contract is amended for the following purpose(s):

- 1) In accordance with Section 1, of the above referenced contract, entitled Effective Date, Duration, and Renewal, parties mutually agree to extend this Contract for the period November 2, 2021, through November 1, 2022, per the terms, conditions, and prices agreed upon. This is the 1<sup>st</sup> renewal, 2<sup>nd</sup> year of the Contract. This Contract, including any renewals, may not exceed a total of seven (7) years.
- 2) In accordance with Section 9, of the above referenced contract, entitled Defense, Indemnification/Hold Harmless, parties mutually agree to replace the previously agreed upon language to the language as shown below:

**9. DEFENSE, INDEMNIFICATION / HOLD HARMLESS**

Contractor shall protect, defend, indemnify, and save harmless the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, liabilities, demands, causes of action, judgments, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by Contractor's employees and agents, its subcontractors, its subcontractor's employees and agents, or third parties on account of property damage, personal injury, bodily injury, death, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract.

Contractor waives all claims, demands, causes of action, and recourse against the State, including claims of contribution or indemnity, arising in favor of Contractor on account of property damage, personal injury, bodily injury, death, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract.

REST OF PAGE INTENTIONALLY LEFT BLANK

- 3) In accordance with Section 12, of the above referenced contract, entitled Compliance with Laws, parties mutually agree to replace the previously agreed upon language to the language as shown below:

## **12. COMPLIANCE WITH LAWS**

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act 42 U.S.C. § 18001 et seq. Contractor will comply with the Prison Rape Elimination Act 34 U.S.C. § 30301 et seq., the Prison Rape Elimination Act final rule 28 CFR Part 115, MDOC Policy 1.1.17, Prison Rape Elimination Act, and ACCD 1.3.1400 PREA to include incident reporting. State has a zero-tolerance policy as to incidents of sexual assault/rape or sexual misconduct in its correctional facilities or premises. Contractor is referred to § 45-5-501 MCA. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with § 49-3-207, MCA, and State of Montana Executive Order No. 04-2016, Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

**12.1 Affordable Care Act.** The Affordable Care Act requires a Contractor, if Contractor is an applicable large employer under the ACA, to provide healthcare coverage for its employees who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980H (ACA) if provided by the State.

- 4) In accordance, with Section 13, of the above referenced contract, entitled Complying with Dark Money Spending Disclosure Requirements, parties mutually agree to delete the section in its entirety in accordance with State of Montana Executive Order 3-2021. For clarity, subsequent sections will not be renumbered.

REST OF PAGE INTENTIONALLY LEFT BLANK

- 5) In accordance with Section 15, of the above referenced contract, entitled Registration with the Secretary of State, parties mutually agree to replace the previously agreed upon language to the language as shown below:

### **15. REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with §§ 35-14-1505, 35-8-1001, and 35-12-1309 MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. §§ 35-8-1001, 35-12-1302, and 35-14-1502, MCA. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

Except as modified above, all other terms and conditions of Contract No. **COR-SVCS-2021-0392-PHCF**, remain unchanged.

**STATE OF MONTANA**  
**Montana Department of Corrections**  
**5 S. Last Chance Gulch**  
**Helena, MT 59601**

**Miles City Community College**  
**2715 Dickinson St.**  
**Miles City, MT 59301**  
**Federal ID # 81-6000208**


DocuSigned by:  
  
 ECD3AA89FE45459... 11/17/2021  
 Steve Ray, Superintendent (Date)  
 Pine Hills Correction Facility

DocuSigned by:  
  
 83E901A547DE43D... 11/17/2021  
 Erin Niedege, Miles Community College (Date)

Approved as to Form:

DocuSigned by:  
  
 A435EB7ACCD641B... 11/17/2021  
 Jason M. Collins, Contracts Officer (Date)  
 Department of Corrections

Approved as to Legal Content:

DocuSigned by:  
  
 41E915492B274F4... 11/17/2021  
 Molenda McCarty, Legal Counsel (Date)  
 Department of Corrections

## **ONLINE EDUCATIONAL SERVICES COR-SVCS-2021-0392-PHCF**

**THIS CONTRACT** is entered into by and between the State of Montana, **Montana Department of Corrections**, (State), whose address and phone number are P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301 and (406) 444-3930, and **Miles Community College**, (Contractor), whose address and phone number are **2715 Dickinson St., Miles City, MT 59301** and **(406) 874-6100**.

### **1. EFFECTIVE DATE, DURATION, AND RENEWAL**

**1.1 Contract Term.** The Contract's initial term is or October 1, 2020, through September 8, 2021, unless terminated earlier as provided in this Contract. In no event is this Contract binding on State unless State's authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.

**1.2 Contract Renewal.** State may renew this Contract under its then-existing terms and conditions (subject to potential cost adjustments described below in Section 2) in one (1)-year intervals, or any interval that is advantageous to State. This Contract, including any renewals, may not exceed a total of seven (7) years.

### **2. COST ADJUSTMENTS**

**2.1 Cost Adjustments Negotiated Based on Changes in Contractor's Costs.** After the Contract's initial term and if State agrees to a renewal, the parties may negotiate cost adjustments at the time of Contract renewal. Any cost increases must be based on demonstrated industrywide or regional increases in Contractor's costs. State is not obligated to agree upon a renewal or a cost increase.

### **3. SERVICES AND/OR SUPPLIES**

Contractor shall provide State online-dual-enrollment and classroom-dual-credit education services to youth and adult students at Pine Hills Correctional Facility (PHCF). Services will be provided on a semester-by-semester basis. Courses will be selected from the current Miles Community College Academic Catalog, which is accessible through the college website. Enrolled students are eligible to complete entry-level distance education courses, which do not require a prerequisite to enroll. The goal of these services is to allow students to attend supervised online classes which will count toward dual credit at both Pine Hills School and Miles Community College for youth and as college credit for adults.

### **4. WARRANTIES**

**4.1 Warranty of Services.** Contractor warrants that the services provided conform to the Contract requirements, including all descriptions, specifications, and attachments made a part of this Contract. State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, State may require Contractor to promptly correct, at Contractor's expense, any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished.

### **5. CONSIDERATION/PAYMENT**

**5.1 Payment Schedule.** In consideration of the online college course credits to be provided, State shall pay Contractor according to the following schedule:

**5.1.1 Cost per Dual-Enrollment Course Credit and College Course Credit.** State will pay contractor **two hundred twenty-seven and 00/100 Dollars (\$227.00)** per online dual-enrollment course credit for no more than sixteen students. Contractor shall pay **fifty-seven and 00/100 Dollars (\$57.00)** per dual course credit for Montana residents for no more than sixteen students. The total contract maximum for the services described herein shall not exceed **ten thousand five hundred sixty and 00/100 Dollars (10,560.00)**.

**5.2 Withholding of Payment.** Subject to provisions of Section 18", Event of Breach – Remedies, State may withhold payments to Contractor if Contractor has breached this Contract. Such withholding may not be greater than, in the aggregate, 5% of the total value of the subject statement of work or applicable contract.

**5.3 Payment Terms.** Unless otherwise noted in the solicitation document, State has thirty (30) days from receipt to pay invoices, as allowed by § 17-8-242, MCA. Contractor shall provide banking information at the time of Contract execution in order to facilitate State's electronic funds transfer payments.

**5.4 Reference to Contract.** The Contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, State is not obligated to timely pay the invoice.

## **6. NON-EXCLUSIVE CONTRACT**

The intent of this Contract is to provide state agencies with an expedited means of procuring supplies and/or services. This Contract is for the convenience of state agencies and is considered by State to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the Contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. State does not guarantee any usage.

## **7. ACCESS AND RETENTION OF RECORDS**

**7.1 Access to Records.** Contractor shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. State may terminate this Contract under Section 17, Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this section. (§ 18-1-118, MCA.)

**7.2 Retention Period.** Contractor shall create and retain all records supporting the online college course credits for a period of eight years after either the completion date of this Contract or termination of the Contract.

## **8. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

Contractor may not assign, transfer, or subcontract any portion of this Contract without State's prior written consent. (§ 18-4-141, MCA) Contractor is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and State under this Contract.

## **9. DEFENSE, INDEMNIFICATION / HOLD HARMLESS**

Contractor shall defend, indemnify, and hold harmless the State of Montana and the contracting agency hereunder and their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, causes of action, liabilities, damages, judgments, expenses or fees, including the reasonable cost of defense thereof and attorney fees, arising or awarded in

favor of Contractor's or its subcontractor's employees or agents or third parties for bodily or personal injuries, death, damage to property, or financial or other loss resulting or allegedly resulting in whole or part from (i) the services performed or products provided or (ii) other acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of State.

## **10. REQUIRED INSURANCE**

**10.1 General Requirements.** Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**10.2 Primary Insurance.** Contractor's insurance coverage shall be primary insurance with respect to State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**10.3 Specific Requirements for Commercial General Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of **\$1,000,000** per occurrence and **\$2,000,000** aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

**10.4 Specific Requirements for Automobile Liability.** Contractor shall purchase and maintain coverage with split limits of **\$500,000** per person (personal injury), **\$1,000,000** per accident occurrence (personal injury), and **\$100,000** per accident occurrence (property damage), OR combined single limits of **\$1,000,000** per occurrence, to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

**10.6 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**10.7 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by Department of Corrections, P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301. *The certificates must name the State of Montana as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies.* Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.



## **11. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with §§ 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

## **12. COMPLIANCE WITH LAWS**

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act 42 U.S.C. § 18001 et seq. Contractor will comply with the Prison Rape Elimination Act 34 U.S.C. § 30301 et seq., the Prison Rape Elimination Act final rule 28 CFR Part 115, MDOC Policy 1.1.17, Prison Rape Elimination Act, and ACCD 1.3.1400 PREA to include incident reporting. State has a zero-tolerance policy as to incidents of sexual assault/rape or sexual misconduct in its correctional facilities or premises. Contractor is referred to § 45-5-501 MCA. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with § 49-3-207, MCA, and State of Montana Executive Order No. 04-2016, Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

**12.1 Affordable Care Act.** The Affordable Care Act requires a Contractor, if Contractor is an applicable large employer under the ACA, to provide healthcare coverage for its employees who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980H (ACA) if provided by the State.

## **13. COMPLIANCE WITH DARK MONEY SPENDING DISCLOSURE REQUIREMENTS**

Contractor shall comply with the provisions of the State of Montana Executive Order No. 15-2018. Contractor shall annually submit a declaration form to the contract liaison. Declaration forms can be found at: <http://spb.mt.gov/Procurement-Guide> or <http://spb.mt.gov/Laws-Rules>.

Contractor shall also annually submit a disclosure form to the contract liaison as required. Disclosure forms can be found at: <http://spb.mt.gov/Procurement-Guide> or <http://spb.mt.gov/Laws-Rules>.

All disclosures must be submitted to [CORContracts@mt.gov](mailto:CORContracts@mt.gov), for reporting on <https://transparency.mt.gov/>. Failure to comply with these requirements may result in contract termination. Contractor agrees that such a failure is a material breach of this Contract.

## **14. DISABILITY ACCOMMODATIONS**

State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

## **15. REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with §§ 35-14-1505, 35-8-1001, and 35-12-1309 MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. §§ 35-8-1001, 35-12-1302, and 35-14-1502, MCA. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

## **16. INTELLECTUAL PROPERTY/OWNERSHIP**

**16.1 Title and Ownership Rights.** State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by State (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

**16.2 Ownership of Work Product.** Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as State may reasonably request, to perfect State's ownership of any Work Product.

**16.3 Copy of Work Product.** Contractor shall, at no cost to State, deliver to State, upon State's request during the term of this Contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of State's request, or such expiration or termination.

**16.4 Ownership of Contractor Pre-Existing Materials.** Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Contractor in connection with the services provided to State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-existing Materials to State before its use and to prove its ownership. If, however, Contractor fails to disclose to State such Contractor Pre-existing Materials, Contractor shall grant State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-existing Materials embedded in the Work Product to the extent such Contractor Pre-existing Materials are necessary for State to receive the intended benefit under this Contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in **Section 22.2, Ownership of Work Product**, or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this Contract.

## **17. CONTRACT TERMINATION**

**17.1 State Termination for Cause with Notice to Cure Requirement.** State may terminate this Contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this Contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than **30** days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**17.2 Contractor Termination for Cause with Notice to Cure Requirement.** Contractor may terminate this Contract for State's failure to perform any of its duties under this Contract after giving State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than **30** days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**17.3 Reduction of Funding.** State must, by law, terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (§ 18-4-313(4), MCA). If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

**17.4 Right of Assurance.** If State, in good faith, has reason to believe that Contractor does not intend to, is unable to, or has refused to perform or continue performing all material obligations under this Contract, State may demand in writing that Contractor give a written assurance of intent to perform. Contractor's failure to provide written assurance within the number of days specified in the demand (in no event less than five business days may, at State's option, be the basis for terminating this Contract and pursuing the rights and remedies available under this Contract or law.

## **18. EVENT OF BREACH – REMEDIES**

**18.1 Event of Breach by Contractor.** Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

- Products or services furnished fail to conform to any requirement;
- Failure to submit any report required by this Contract;
- Failure to perform any of the other terms and conditions of this Contract;
- Beginning work under this Contract without prior State approval or breaching Section 24.1, Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

**18.2 Event of Breach by State.** State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

**18.3 Actions in Event of Breach.** Upon Contractor's material breach, State may:

- Terminate this Contract under Section 17.1, State Termination for Cause with Notice to Cure Requirement and pursue any of its remedies under this Contract, at law, or in equity; or

- Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

Upon State's material breach, Contractor may:

- Terminate this Contract under Section 26.2, Contractor Termination for Cause with Notice to Cure Requirement, and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

## **19. FORCE MAJEURE**

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

## **20. WAIVER OF BREACH**

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

## **21. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

## **22. LIAISONS AND SERVICE OF NOTICES**

**23.1 Contract Liaisons.** All project management and coordination on State's behalf must be through a single point of contact designated as State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this Contract must be coordinated between State's liaison and Contractor's liaison.

Teagan Stanley is State's liaison  
4 North Haynes Avenue  
Miles City, MT 59301  
(406) 233-2203  
[TStanley@mt.gov](mailto:TStanley@mt.gov)

Erin Niedege is Contractor's liaison  
2715 Dickinson St.  
Miles City, MT 59301  
(406) 874-6211  
[NiedegeE@milesc.edu](mailto:NiedegeE@milesc.edu)

**23.2 Contract Manager.** State's Contract Manager identified below is State's single point of contact and shall perform all contract management on State's behalf. Written notices, requests, complaints, or any other issues regarding this Contract should be directed to State's Contract Manager.

Kristi Hernandez is State's Contract Manager  
5 S. Last Chance Gulch  
Helena, MT 59620  
(406) 444-9649  
[Kristi.Hernandez@mt.gov](mailto:Kristi.Hernandez@mt.gov)

Erin Niedege is Contractor's Contract Manager  
2715 Dickinson St.  
Miles City, MT 59301  
(406)  
[NiedegeE@milesc.edu](mailto:NiedegeE@milesc.edu)

**23.3 Notifications.** State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective on the third business day after mailing.

## **24. MEETINGS**

**24.1 Technical or Contractual Problems.** Contractor shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and State in the performance of their respective obligations, at no additional cost to the State. State may request the meetings as problems arise and will be coordinated by State. State shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract

**24.2 Failure to Notify.** If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

**24.3 State's Failure or Delay.** For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of State's failure or delay in discharging any State obligation, State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby and provide for any additional charges by Contractor. This is Contractor's sole remedy. If State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

## **25. TRANSITION ASSISTANCE**

If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. State shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If State terminates a project or this Contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

**26. CHOICE OF LAW AND VENUE**

Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees, except as provided in Section 9, Defense, Indemnification/Hold Harmless.

**27. TAX EXEMPTION**

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act 42 U.S.C. § 18001 et seq.

**28. PERSONAL PROPERTY TAX**

All personal property taxes will be paid by Contractor.

**29. AUTHORITY**

This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**30. SEVERABILITY**

A declaration by any court or any other binding legal source that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

**31. PARAGRAPH HEADINGS**

The captions and headings set forth in this Contract are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

**32. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**32.1 Contract.** This Contract consists of **10** numbered pages. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**32.2 Entire Agreement.** These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

**33. WAIVER**

State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

**34. EXECUTION**

The parties through their authorized agents have executed this Contract on the dates set out below.

**STATE OF MONTANA**  
**Montana Department of Corrections**  
**5 S. Last Chance Gulch**  
**Helena, MT 59601**

**Miles City Community College**  
**2715 Dickinson St.**  
**Miles City, MT 59301**  
**FEDERAL ID # 81-6000208**

BY: Steve Ray, Superintendent PHCF  
(Name/Title)

DocuSigned by:

Steve Ray

ECD3AA89FE45459...

(Signature)

DATE: 10/28/2020

BY: Erin Niedege, Miles Community College  
(Name/Title)

DocuSigned by:

Erin Niedege

83E901A547DE43D...

(Signature)

DATE: 10/28/2020

Approved as to Form:

DocuSigned by:

Kristi Hernandez

10/27/2020

3C5650C707644B2...

Contracts Officer (Date)  
Department of Corrections

Approved as to Legal Content:

DocuSigned by:

Melinda McLarty

10/26/2020

41E915492B274FA...

Legal Counsel (Date)  
Department of Corrections